

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BARRY EMMETT, #1383329,

Plaintiff,

v.

TDCJ-CID, et al.,

Defendants.

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Case No. 6:21-cv-002-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Barry Emmett, a prisoner within the Texas Department of Criminal Justice, proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. This case was referred to United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for disposition.


On January 6, 2021, Judge Love issued a Report and Recommendation in this case. Docket No. 5. In that Report, Judge Love found that Plaintiff accumulated at least three strikes prior to filing this lawsuit pursuant to 28 U.S.C. § 1915(g). Accordingly, the Report recommended that Plaintiff's motion to proceed *in forma pauperis* be denied and that the case be dismissed, with prejudice for the purpose of proceeding *in forma pauperis*. Judge Love further recommended that the case should proceed if Plaintiff paid the full filing fee within fifteen days of the dismissal order. Plaintiff timely objected. Docket No. 8.

Where a party objects within fourteen days of service of the Report and

Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Having conducted a de novo review of the Report and the record in this case, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner's objections are without merit. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 5) as the findings of this Court. The Court **DENIES** Plaintiff's motion for leave to proceed *in forma pauperis* (Docket No. 2). Further, the Court **DISMISSES** Plaintiff's civil rights lawsuit, with prejudice for purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g), but without prejudice as to the refiling of his lawsuit without seeking *in forma pauperis* status. Finally, if Plaintiff pays the requisite \$400 filing fee within fifteen days of this Order, the lawsuit shall proceed as though the full filing fee had been paid from the outset.

So **ORDERED** and **SIGNED** this **25th** day of **January, 2021**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE